

110TH CONGRESS  
1ST SESSION

# H. R. 2932

To amend title 39, United States Code, to make cigarettes and certain other tobacco products nonmailable, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2007

Mr. MCHUGH introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 39, United States Code, to make cigarettes and certain other tobacco products nonmailable, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. NONMAILABILITY OF CERTAIN TOBACCO PROD-**  
4                               **UCTS.**

5       (a) IN GENERAL.—Chapter 30 of title 39, United  
6       States Code, is amended by inserting after section 3002a  
7       the following:

1 **“§ 3002b. Nonmailability of certain tobacco products**

2 “(a) IN GENERAL.—Cigarettes, smokeless tobacco,  
3 and roll-your-own-tobacco—

4 “(1) are nonmailable matter;

5 “(2) shall not be—

6 “(A) deposited in the mails; or

7 “(B) carried or delivered through the  
8 mails; and

9 “(3) shall be disposed of as the Postal Service  
10 directs.

11 “(b) CIVIL PENALTY.—

12 “(1) IN GENERAL.—Any person who violates  
13 subsection (a)(2)(A) shall be liable to the United  
14 States for a civil penalty in an amount not to exceed  
15 \$100,000 for each violation.

16 “(2) HEARINGS.—

17 “(A) IN GENERAL.—The Postal Service  
18 may determine that a person has violated sub-  
19 section (a)(2)(A) only after notice and an op-  
20 portunity for a hearing. Proceedings under this  
21 paragraph shall be conducted in accordance  
22 with section 3001(m).

23 “(B) PENALTY CONSIDERATIONS.—In de-  
24 termining the amount of a civil penalty under  
25 this paragraph, the Postal Service shall con-  
26 sider—

1 “(i) the nature, circumstances, extent,  
2 and gravity of the violation;

3 “(ii) with respect to the violator, the  
4 degree of culpability, ability to pay, and  
5 any history of prior violations; and

6 “(iii) such other matters as justice  
7 may require.

8 “(3) CIVIL ACTIONS TO COLLECT.—A civil ac-  
9 tion may, in accordance with section 409(g)(2), be  
10 brought in an appropriate district court of the  
11 United States to collect a civil penalty assessed  
12 under paragraph (2).

13 “(4) DISPOSITION OF AMOUNTS.—Amounts re-  
14 ceived in payment of any civil penalties under this  
15 subsection shall be deposited as miscellaneous re-  
16 cepts in the Treasury of the United States.

17 “(c) DETENTION OF MAIL FOR TEMPORARY PERI-  
18 ODS.—

19 “(1) IN GENERAL.—In preparation for or dur-  
20 ing the pendency of proceedings under subsection  
21 (b), the Postal Service may, under the provisions of  
22 section 409(g)(2), apply to the district court in any  
23 district in which the defendant is found or in any  
24 district in which is sent or received any mail depos-  
25 ited in the mails allegedly in violation of subsection

1 (a)(2)(A), for a temporary restraining order and  
2 preliminary injunction under the procedural require-  
3 ments of rule 65 of the Federal Rules of Civil Proce-  
4 dure.

5 “(2) REQUIREMENTS.—

6 “(A) COURT ORDERS.—Upon a proper  
7 showing, the court shall enter an order which  
8 shall—

9 “(i) remain in effect during the pend-  
10 ency of the statutory proceedings or any  
11 judicial review of such proceedings; and

12 “(ii) direct the detention by the post-  
13 master, in any and all districts, of the de-  
14 fendant’s incoming mail and outgoing mail,  
15 which is the subject of the proceedings  
16 under subsection (b).

17 “(B) PROOF REQUIRED.—A proper show-  
18 ing under this paragraph shall require proof of  
19 a likelihood of success on the merits of the pro-  
20 ceedings under subsection (b).

21 “(3) DISPOSITION OF UNRELATED MAIL.—Mail  
22 detained under paragraph (2) shall—

23 “(A) be made available at the post office of  
24 mailing or delivery for examination by the de-

1           fendant in the presence of a postal employee;  
2           and

3           “(B) be delivered as addressed if such mail  
4           is not clearly shown to be the subject of pro-  
5           ceedings under subsection (b).

6           “(d) DEFINITIONS.—For purposes of this section—

7           “(1) the terms ‘cigarette’ and ‘roll-your-own-to-  
8           bacco’ have the meanings given them by section  
9           5702 of the Internal Revenue Code of 1986; and

10          “(2) the term ‘smokeless tobacco’ has the  
11          meaning given such term by section 2341 of title  
12          18.”.

13          (b) ADMINISTRATIVE SUBPOENAS.—Section 3016(a)  
14          of title 39, United States Code, is amended in paragraphs  
15          (1)(A) and (2) by inserting “3002b(b) or” before  
16          “3005(a)”.

17          (c) SEMIANNUAL REPORTS.—Section 3013 of title  
18          39, United States Code, is amended—

19                 (1) in paragraph (1), by inserting “3002b(b)  
20                 or” before “3005”; and

21                 (2) in paragraph (3), by striking “section 3007  
22                 of this title” and inserting “section 3002b(c) or sec-  
23                 tion 3007, respectively,”.

1 (d) AMENDMENTS TO TARIFF ACT OF 1930.—Sec-  
 2 tion 583(c)(1) of the Tariff Act of 1930 (19 U.S.C.  
 3 1583(c)(1)) is amended—

4 (1) by redesignating subparagraph (K) as sub-  
 5 paragraph (L); and

6 (2) by inserting after subparagraph (J) the fol-  
 7 lowing:

8 “(K) Cigarettes, smokeless tobacco, or roll-  
 9 your-own tobacco (as those terms are defined in  
 10 section 3002b of title 39, United States  
 11 Code).”.

12 (e) CLERICAL AMENDMENT.—The table of sections  
 13 for chapter 30 of title 39, United States Code, is amended  
 14 by inserting after the item relating to section 3002a the  
 15 following:

“3002b. Nonmailability of certain tobacco products.”.

16 (f) EFFECTIVE DATES.—

17 (1) IN GENERAL.—Except as provided in para-  
 18 graph (2), the amendments made by this section  
 19 shall take effect on the 60th day after the date of  
 20 the enactment of this Act, and shall apply with re-  
 21 spect to any mail matter mailed on or after such  
 22 60th day.

23 (2) SEMIANNUAL REPORTS.—The amendments  
 24 made by subsection (c) shall apply with respect to  
 25 reports submitted for reporting periods (as referred

1 to in section 3013 of title 39, United States Code)  
2 beginning with the reporting period in which occurs  
3 the 60th day after the date of the enactment of this  
4 Act.

5 **SEC. 2. TECHNICAL CORRECTION.**

6 (a) IN GENERAL.—Sections 3007(a)(1), 3012(b)(1),  
7 and 3018(f)(1) of title 39, United States Code, are amend-  
8 ed by striking “409(d)” and inserting “409(g)(2)”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 subsection (a) shall take effect as if included in the enact-  
11 ment of the Postal Accountability and Enhancement Act  
12 (Public Law 109–435).

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